HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.25878 OF 2006

Between:

The India Cements Limited,
Chilamkur – 516 310,
Yerraguntla Mandal,
Kadapa District, rep., by its
Asst. General Manager (F & A),
Shri K. Madhusudana Rao

…Petitioner

AND

Assistant Commissioner of
Customs and Central Excise,
Opp. District Court, Dwaraka Complex,
Cuddapah Division, Cuddapah
and another

...Respondents

: O R D E R :

Counsel for the petitioner : Ms. Anjali Agarwal
Counsel for the Respondents : Shri A. Rajasekhar Reddy, Assistant Solicitor General

27th December, 2006

Per G.S.SINGHVI, C.J.

This petition is directed against order dated 19-06-2006 passed by Customs, Excise and Service Tax Appellate Tribunal (South Zonal Bench), Bangalore, whereby the appeal preferred by the petitioner against order dated 13-12-2004 of the Commissioner of Customs and Central Excise (Appeals), Guntur along with the application for condonation of delay were dismissed.

On the last date of hearing i.e., 18-12-2006, Shri A. Rajasekhar Reddy, learned counsel for the respondents raised an objection to the maintainability of the writ petition on the ground that an effective alternative remedy of appeal is available to the petitioner under Section 35-G of the Central Excise Act, 1944 (for short, 'the 1944 Act'). Thereupon, Shri C.Kodanda Ram, learned counsel for the petitioner made a request for adjournment. His request was accepted and the case was adjourned for today.

Ms.Anjali Agarwal appearing for Shri C.Kodanda Ram,. Counsel for the petitioner fairly stated that the statutory remedy of appeal is available to the appellant against order dated 19-06-2006. She then submitted that the petitioner may be permitted to withdraw the writ petition with liberty to file appeal under Section 35-G of the 1944 Act along with an application for condonation of delay.

Shri A. Rajasekhar Reddy says that he does not have any objection.

In view of the above, the writ petition is dismissed as withdrawn with liberty in terms of the prayer made. If the petitioner files appeal

within a period of two weeks from today, then the respondents shall not be entitled to raise the objection of limitation

As a sequel to the disposal of the writ petition in the manner indicated above, WPMP No. 33212 of 2006 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

December 27, 2006

C.V. NAGARJUNA REDDY, J.

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